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BRANSCOME *v.* CUNDUFF.

Sept. 19, 1918.

[96 S. E. 770.]

1. **Appeal and Error (§ 333*)—Dismissing of Appeal—Moot Cases.**—Where a physician, who had been enjoined from practicing medicine and had appealed, died after the cause was argued and submitted, the appeal will be dismissed, and will not be retained to determine question of costs.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 430.]

2. **Costs (§ 232*)—Appeal—Dismissal—Moot Question.**—Where an appeal, by reason of death of appellant, presents only a moot question, costs will not be awarded either party on dismissal.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 623.]

Appeal from Circuit Court, Carroll County.

Suit by S. A. Cunduff to enjoin E. L. Branscome from practicing medicine. Decree for plaintiff, and defendant appeals. Appeal dismissed.

Wm. D. Tompkins and Hooker & Hooker, for the appellant.

S. Floyd Landreth, B. P. Bolen and W. S. Tipton, for the appellee.

POSEY et al. *v.* COMMONWEALTH.

Sept. 19, 1918.

[96 S. E. 771.]

1. **Taxation (§ 856*)—Inheritance Taxes—Power of State.**—The power of the state to impose collateral inheritance taxes is unlimited.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 1016.]

2. **Statutes (§ 205*)—Construction—Legislative Intent.**—A fundamental rule of statutory construction is that the legislative intent is to be gathered from the whole statute, taken together, giving to each word and part its due meaning, and to the words used their ordinary and popular meaning, unless otherwise used.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 759, 762, 767.]

3. **Taxation (§ 886½*)—Inheritance Taxes—Collateral Inheritance—Statute.**—Under Acts 1916, c. 484, on real estate, inherited by nieces, of appraised value of \$378,050, collateral inheritance taxes amounting to \$41,707.50 were properly assessed, by assessing the first \$50,000 at 5 per cent., next \$200,000 at 10 per cent., and remainder at 15 per cent.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 1016.]

4. **Statutes (§ 190*)—Policy of Legislation—Power of Courts.**—Where meaning of words used in statute is clear, courts have no

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

power but to declare it, and leave question of policy to the Legislature, where it properly belongs.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 760.]

Error to Corporation Court of City of Roanoke.

Motion by one Posey and another, as against the Commonwealth, to correct assessment of a collateral inheritance tax. To review judgment of refusal, movants bring error. Affirmed.

Hart & Hart, for the plaintiffs in error.

Attorney-General Jno. R. Saunders and Assistant Attorney-General, J. D. Hank, Jr., for the Commonwealth.

ÆTNA INS. CO. *v.* ASTON.

Sept. 19, 1918.

[96 S. E. 772.]

1. Appeal and Error (§ 1002*)—Verdict—Conclusiveness.—Questions of fact, resolved adversely to the defendant on conflicting evidence, were concluded by the verdict.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

2. Insurance (§ 658 (14)*)—Proofs of Loss—False Statements—Question for Jury.—Whether insured made false statements in making his proofs of loss under a fire insurance policy was a question for the jury under all the facts and circumstances of the case.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 424.]

3. Insurance (§ 344*)—Fire Insurance—Forfeiture—Agreement to Assign.—Under a fire insurance policy, void if assigned before loss, a mere agreement to assign it will not work a forfeiture.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 87.]

4. Insurance (§ 343*)—Fire Insurance—Interest in Proceeds of Policy—Assignment.—After a risk has terminated by fire the insurer's interest becomes a chose in action, which he may assign without the consent of the insurer, notwithstanding clause forbidding assignment without consent of insurer.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 87.]

5. Insurance (§ 328 (2)*)—Fire Insurance—Right of Possession.—If, at the time of fire, there had been no change in the title and ownership of the property, it necessarily follows that there had been no change in the right of possession, as distinguished from mere occupancy.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 420.]

6. Specific Performance (§ 14*)—Contracts—Assent of One Not Party.—On principles of public policy a party could not enforce a contract to exchange his property for farm property, where the wife of the other party was a part owner of the farm, and had a dower interest in the remainder of the land, and had not signed the contract.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 524, 628.]

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